

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

IN RE: DIGITEK PRODUCTS LIABILITY LITIGATION

MDL NO. 1968

THIS DOCUMENT RELATES TO ALL CASES

**PLAINTIFFS' EX PARTE APPLICATION TO ENLARGE THE TIME TO RESPOND
TO DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT AND TO EXCLUDE
EXPERTS (MDL Pacer Docket Nos: 522-529).**

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

Pursuant to *Federal Rule of Civil Procedure* 6(b)(1)(A) Plaintiffs hereby move that this Court enlarge the amount of time that the Plaintiffs have to respond to the extensive motions recently filed by Defendants including the following:

- (1) Docket No. 522 – Defendants' Background of Key Information;
- (2) Docket Nos. 523-524: Defendants' Motion for Summary Judgment;
- (3) Docket Nos. 525-526: Defendants' Motion to Exclude All General Liability Experts;
- (4) Docket Nos. 527: Defendants' Motion to Exclude Hearsay;
- (5) Docket Nos. 528-529: Defendants' Companion Motion for Summary Judgment and to Exclude All General Liability Experts.

Similar Ex Parte Applications have been or will be filed in two of the remaining MDL cases seeking an enlargement of time for the case specific motions filed in those matters. (*McCornack v. Actavis*, Case No. 09-cv-0671 and *Vega v. Actavis*, Case No. 09-cv-0768.)

Good cause exists in that Defendants' motions, which are all designed to terminate the remaining cases that did not opt-in to the MDL settlement, are both legally and factually intensive and will require significant time on the part of the attorneys to research and write. Plaintiffs' counsel are diligently working to respond to the Motions but 2 weeks is insufficient and an additional 2 weeks is all that is being requested. Defense counsel indicated he would not oppose a 1 week extension of time, but he was unwilling to agree to a 2 week extension of time.

Under the current schedule, Plaintiffs' Oppositions are due August 17, 2011. Plaintiffs request that their time to respond be enlarged to permit filing as late as Friday September 2, 2011, which will give them a total of 30 days to respond to these motions. Plaintiffs are flexible on the deadline the Court wishes to set for the Defendants' Reply Briefs and the time to hear the motions. Plaintiffs request that the Court set the parameters of a hearing date and then permit all parties to meet and confer to propose a mutually acceptable hearing date. Currently, Reply Briefs are due September 1, 2011 and the hearing is scheduled for September 14-15, 2011.

This motion is made pursuant to *Federal Rules of Civil Procedure*, Rule 6(b) and the court's inherent authority to control its docket.

This motion is based upon this Application and attached exhibits, the points and authorities, the supporting declaration of counsel, and such evidence and argument as may be presented at the hearing.

Dated: August 5, 2011

On Behalf of the Plaintiffs' Steering Committee

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CERTIFICATE OF SERVICE

I hereby certify that on August 5, 2011, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

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